

LAKE COUNTY BOARD of ADJUSTMENT
June 8, 2011
Meeting Minutes

MEMBERS PRESENT: Clarence Brazil, Sue Lavery, Mike Marchetti, Tim McGinnis, Paul Grinde

STAFF PRESENT: Joel Nelson, LaDana Hintz, Robert Costa, Karl Smithback, Lita Fonda

Mike Marchetti called the meeting to order at 4:05 pm

Mike opened discussion of the May 11, 2011 minutes, by bringing up the intent of the discussion of which the second sentence of the bottom paragraph (on pg. 7) was a part. The discussion involved concerns about the density calculation. They didn't want a portion of the property that had been included in the density calculations excluded in other considerations, and felt this should be known. Joel said it was definitely part of the record for the subdivision process. Clarence said in 5 years, different members might be on the board, and the new members might see things differently. Joel explained that if the BOA said no, the remedy was to return to the BOA. Tim said the basic point was redundant. The members of the BOA might change but the body continued. Sue pointed out she wasn't there, and added the intent of the Board should be shown in the minutes. Joel suggested that the second sentence say, "This request was based on inclusion of that property."

Motion made by Mike Marchetti, and seconded by Paul Grinde, to amend the May minutes as suggested. Motion carried, 4 in favor (Clarence Brazil, Mike Marchetti, Tim McGinnis, Paul Grinde), and 1 abstention (Sue Lavery).

Motion made by Paul Grinde, and seconded by Clarence Brazil, to approve the May 11, 2011 meeting minutes as amended. Motion carried, 4 in favor (Clarence Brazil, Mike Marchetti, Tim McGinnis, Paul Grinde), and 1 abstention (Sue Lavery).

BBG LAKESHORE LLC CONDITIONAL USE—EAST SHORE

LaDana Hintz presented the staff report. (See attachments to minutes in the June 2011 meeting file for staff report.) She gave two changes to wording in the conditions on pg. 16: #12 should read 'retaining wall system' rather than 'new primary residence' and in #14, the word 'exterior' should be eliminated in front of 'construction'. She suggested a new condition, #15: *"Within 6 weeks of completion of the wall installation, the engineer shall submit a letter to the Planning Department certifying that the project has been completed in compliance with the proposed plans and the conditions that were required. At a minimum the letter should address the requirements associated with the wall installation, landscaping, and sanitation."* This would allow an opportunity to show that the proposal was installed in compliance with the approval.

Mike confirmed with LaDana that the septic system was shared with the neighbor to the south. He asked if there were issues with the connection pipes and so forth. LaDana pointed to condition #6, where they would need to demonstrate to the Environmental Health Dept that the system was functioning properly. Mike thought that was just the drainfield. Tim liked the addition of condition #15 with the sign-off. Sue asked if the septic system was known to be currently in working order.

Bob Geis spoke as one of the applicants. Greg and Lisa Baker were also present. In 2007 when they acquired the property they upgraded the septic system to an Advantex system. It was monitored by Glacier Telemetry. It was wired into the phone. If something went wrong, it automatically alerted the Jacobsons at Glacier Telemetry. It was monitored every quarter. He thought this involved water samples. It was in working order. When the landslide occurred, it was moved up 3 inches. He didn't think the integrity of the septic pipes was affected. They were definitely going to make sure it worked. They'd heard nothing from the south neighbor about its function. Bob passed around recent pictures of the vegetation on the slopes. He offered to address other questions or concerns the Board might have.

Tim asked when A2Z Engineering became involved. Bob replied this occurred on April 27. They had attempted to fix the problem, and in their haste to do so, they didn't go through the proper channels and permitting. Both LaDana and Anne Moran (who represented DNRC) visited the site. They contacted Bob and Greg immediately. Bob contacted Matt Nerdig from A2Z, who was there the same afternoon to start the project.

Matt Nerdig of A2Z Engineering spoke. They did the design on the wall, and the site analysis and slope analysis. The block was on site, and they came up with a design system that used that block. Concrete tied into the block. It acted like a really heavy weight leaned against a wall. They made the geotechnical analysis to make sure the wall would retain integrity. There was reinforced concrete behind it. There would be a drainpipe in the concrete. It acted to stabilize the wall but also to allow the water to drop to the bottom, hit the drainpipe and then roll out around the wall so it wouldn't be discharged on the drainfield or right by the house. They would pressure test the drainfield after the wall installation was completed. They could dig up the end of the laterals, and check pressure when the pump kicked on. Even a slight hole in the laterals would very quickly alter the pressure in the whole field. They would know quickly if there was a cracked pipe. The other lines were typically more than 5 feet down. The drainfield area was the area of concern to check. The other pipes were down 2 to 3 feet. It would take a large load to break or impact those. They worked with Anne Moran to come up with a vegetation plan. They drew a schematic that was sent to the DNRC service forester, who commented. They added the comments to a sheet he had today, along with a letter from the forester. This would be implemented along with the other.

Anne Moran, the Kalispell DNRC unit planner spoke. She managed the leased and licensed lands of the DNRC from Whitefish to Arlee. This was one of the leased lots. This was a unique situation, and she shared some of the history. They were very firm about having lessees comply with county regulations wherever possible. They took this

seriously as landowners. They were grateful for Lake County's and particularly LaDana's partnership to ensure they were working together with each other's regulations. In this case, there was a situation of noncompliance and it was what she considered an emergency situation. She understood the reaction was certainly not what she would have liked, and had made that clear.

Anne noted that on the whole, her experience with these lessees has been very, very good. They demonstrated a great deal of integrity. When they came on board, they succeeded a lessee who had not been compliant on either the state or county end. The improvements that the current lessees put in, including lower retaining walls and shared septic, were done in cooperation with representatives of Lake County, the Tribe and herself. At the request of both the county sanitarian and the Tribe, installations not typically done were approved, in terms of shared septic and retaining walls close to the lake in order to improve and stabilize this lot. BBG had attempted in every case to do what was right, and tried to fulfill the responsibilities that DNRC laid out for them. It wasn't often that she drove 60 miles to tell someone that, when she had so many leases to manage and so much going on. She offered to answer questions as the landowner representative. She was grateful for the cooperation.

Anne added she hoped they could keep the improvements contained to this lot as much as possible. If not, they would work with the neighbor. It was easier at her end to keep the improvements on each lot separate. However, the priority was what Matt thought and what LaDana thought. Sue checked that the neighboring property was also a DNRC lease lot. Anne confirmed. She reiterated the highest priority was to retain. If it was all the same in terms of retaining, it was helpful at her end to look at the boundary lines, and that would be very helpful.

Gregg Baker, one of the applicants, also spoke on behalf of the application. Above the wall, a lot of mistletoe had to be removed. He put in a drip system last year. The 40 trees he planted last year were selected from the lakeshore regulation list. They were growing. He thought whatever plantings needed to be done with the wall, that it wouldn't scratch more than it had to. The plantings were really growing in, and he thought they could hold it. He loved the vegetation. They didn't want this to happen. He showed up and there was a big rock on the [inaudible] and rocks up against the house. They couldn't get in the driveway for the amount of dirt. He put up a temporary retaining wall to save the drainfield and planted vines. He was sorry that he didn't go through the right steps. The contractors that he brought in didn't mention that a permit was needed to fix this. He should have contacted Anne. He took responsibility for that. It wasn't something Bob had done. What they did next would be done right.

Tim asked Anne what she thought of condition #8. Anne said she hadn't visited personally with the southern property lessee. DNRC was the landowner, and if they wanted to see a wall put in there, they could make the commitment to put it in there. She was clear on this for both lots. Her preference was to keep this separate. Improvements on a lease lot would be owned by the lessee. It was easier to keep improvements to a specific lot, if it was the same in terms of retainment. She could provide verification as

the landowner of the neighboring lot. She'd like to have the lessee involved. He was in a contract with the applicants for both water and septic. As far as she knew, he'd been cooperative the whole way. Tim said it seemed like time was of the essence here, so he wasn't sure whom the sign-off was to be from. LaDana thought there should be something from the leaseholder. Anne said that she would defer to LaDana on this, but she would recommend if the engineer determined it was necessary for the engineered portion of the wall to extend onto the neighboring leased lot, DNRC would provide that approval and also deal with the notification of the neighbor, if that was comfortable as far as the County was concerned. LaDana said she just wanted the neighbor to know if this was going to be extending onto the other lot and if the neighbor was going to be paying for it. Anne assumed they wouldn't be paying for it. LaDana said it would be one of their improvements. Anne said that was DNRC's thing to worry about, and they had to deal with it as an improvement.

Matt noted they looked at stability of the wall itself and also global stability, in terms of this area, which would be the whole slope. There was not a concern on that front. The concern was the stability of the wall. At the edge of the property line, the wall was perhaps 4 feet tall. Typically most walls under 3 feet weren't engineered. Four feet was pushing the edge of that, so he believed that stopping the wall at the edge of the property would be fine, from an engineering perspective. There was a chance that more sloughing would occur on the neighbor's lot. It was only a 4-foot bank so the sloughing would be a little bit of soil onto their driveway. If the neighbor wanted to take care of that, he could go to a [inaudible]. Gregg pointed out a corner that sloughed, which gave him some concern.

Anne agreed with LaDana that they needed to have a chat with the neighboring lessee. She also could commit as the DNRC owner. Tim asked if condition #8 should specify both property holder and lease holder. He wondered about other changes to the condition. Anne thought they needed to be careful to keep DNRC's authority. That could not be subordinated to the lessee. The contracts were very clear on that. She would commit to having the communication with the lessee if that was necessary. She preferred not to retain across the property line if it wasn't necessary. If it was, DNRC had to have that communication with the neighbor. She asked about what would be comfortable.

Sue asked if they should strike the leaseholder [in condition #8] and just say property owner. LaDana thought it was fair to make sure the leaseholder saw the plans, since it was going on their property. Anne concurred. She thought it might help that DNRC had a standard that if something was above surface within 10 feet of the property line, they got concurrence in writing from the property of the lessee next door. Would that fulfill what LaDana was talking about in this case? LaDana thought it would. Anne said DNRC would exercise their policy for notification of the neighboring lessee. She agreed with LaDana it made problems for everyone if they don't have notification.

Tim and Sue liked what Anne said. LaDana asked what the wording for condition #8 should be. Anne suggested (with some repetitions on request) that it could say *prior to*

the issuance of a zoning conformance permit, the applicant shall submit evidence to the Planning Department demonstrating validation from the engineer as to whether it is necessary to retain across the lot boundary. If it is necessary to retain across the lot boundary, then the southern property owner (DNRC) shall exercise its responsibility to notify the lessee per DNRC policies and procedures of a 'an above - surface improvement' crossing the lot line. DNRC would provide the Lake County Planning Dept. with verification of the same. Anne asked that 'lot line' be used instead of 'property line'.

Public comment opened:

Bob Geis said he recently discussed with Anne if it would be possible to put a small fence on top of the wall if it were really tall. There were grandchildren on both sides of the property, and the concern was they would climb up the hill and fall off the wall. He detailed what they hoped for something unobtrusive, possibly black, that wasn't very high, where the hill met the top of the wall. Anne asked about County policies. LaDana mentioned the visual effect. Anne didn't think a dark wire-type fence would be very noticeable. She said in Flathead County, they typically approved fences as long as the fences followed county guidelines. She would be okay with this. Safety was good. They required the lessees to have safe conditions on the lots. LaDana thought that would be fine. It typically wasn't a Board issue. Mike was confident the East Shore zoning didn't have something on fence requirements.

Public comment closed.

Motion made by Sue Laverty, and seconded by Paul Grinde, to incorporate the following changes to the proposed conditions:

- **change condition #8 as reworded by Anne Moran (see previous discussion, italicized)**
- **modify condition #12 by replacing 'new primary residence' with 'retaining wall system'**
- **change condition #14 by deleting 'exterior'**
- **add #15 as suggested by LaDana Hintz (see previous discussion, italicized)**

Mike checked that it was clear the vote would be for all of the proposed changes, and checked for comment.

Motion carried, all in favor.

Motion made by Sue Laverty, and seconded by Mike Marchetti, to approve the conditional use with staff report, findings of facts and conditions #1 through #15 as amended. Motion carried, all in favor.

GREGORY CONDITIONAL USE—EAST SHORE

LaDana Hintz presented the staff report. (See attachments to minutes in the June 2011 meeting file for staff report.) For condition #6 on pg. 18, the setbacks were based on use of the existing lot width and did not take into account the other options, such as a boundary line adjustment or aggregation. The Board might want to modify this

condition. On pg. 17, #4 did include four options of what could be done to meet the setback requirements.

Mark St. Sauver spoke on behalf of the applicant, his brother-in-law. Regarding setbacks, for the 50' setback to the orchard, was that to the trees themselves or to the property boundary of the orchard? The actual orchard was well below where the house was supposed to go, probably 100 feet. LaDana said this was just the orchard. His site plan didn't show this. Mark thought Chuck didn't know about having the fire department take a look. Which came first: getting the conditional use or having the fire dept. come there? He thought the best option for the property setback would be to move the property boundary. It was to be surveyed today, but it got rained out. They didn't know the exact measurement. They were guessing at the location of the boundary line. He was surprised the bathhouse would be counted as a guesthouse. LaDana explained with the water and sewer facilities, it could be expanded and become a guest house. He could have a second guest house but it would require a conditional use. She thought moving the boundary was the cleanest option at this point. Mark asked if he could have gotten a conditional use for the 15-foot setback. LaDana explained a change in setback was a variance, and had to be publicly noticed. He could have done the applications at the same time.

Mike asked if the house could be moved 4 feet to the north. Mark said the problem was that it would be really close to the creek. LaDana said they were really close to the creek already. Mark didn't know what the regulations for the creek would be. They wanted to get the house between the creek and the boundary, and stay away from the creek and closer to the boundary. The line would be surveyed so they won't be guessing. LaDana mentioned Tiffany Lyden sent him an email in October that he didn't meet the setback requirement. Tim observed that LaDana was giving options. It was up to the owner. Mark thought Chuck was frustrated with possibly getting another variance for setback. In the long run, he'd probably just end up moving the south border.

Sue said he wouldn't necessarily have to move the entire boundary. He could adjust the lot line so it met the setback by the house. One landowner was involved instead of two. A 'jog' in the line might also be an option. Mark thought he'd probably prefer to move the whole line, given the way the orchard was. Sue said these were more options. LaDana suggested bringing in an actual plan of what might happen. Mark said another option was to move the house to the west. The main concern was if he had to be 50 feet off of the south border because of the orchard, instead of 50 feet from the orchard itself. The site plan should show where the orchard was.

Public comment considered, but no public were present.

Sue brought up condition #6 on pg. 18. Perhaps in 6.b at the end, they could add a sentence saying that *should the lot boundaries, change, then calculations would be updated to reflect the new setback*. This was discussed. LaDana thought she put the 18.8 in there so it was specific on what it was they got right now. Mike reiterated it was 20 feet or 10%. LaDana said that right now he only had to move it a foot. Mike wondered if the condition needed to be in there. It was already part of the zoning conformance

regulations for this community. Sue thought it made it clearer for the owner. LaDana thought it should be there so it was very clear for the owner what the Board was approving. Given that he needed something else, like a variance, it needed to be very clear that 18.8 was what he got, unless there was additional review or a change. Mark checked that if he kept it the way it was, he could go 18.8 feet. If the property changed or whatever, he'd have to go with the 10 % rule, and LaDana mentioned the 20-foot minimum for wider lots. Sue added if he chose to do some sort of lot line adjustment, it would really behoove him to talk with LaDana to make sure the calculations work for what he was trying to do.

Motion made by Sue Laverty, and seconded by Clarence Brazil, to add the sentence, "Should the lot boundaries, change then calculations would be updated to reflect the new setback" after 6.b. Motion carried, all in favor.

Motion made by Mike Marchetti, and seconded by Sue Laverty, to approve the conditional use with staff recommendations and other County stuff (findings of fact, staff report and so forth). Motion carried, all in favor.

Mark checked that they got to go with the 36'. LaDana replied he needed to get a letter from the Fire Dept.

OTHER BUSINESS

Joel touched base with the Board on the copy of the actual 1997 document adopted for Lake Mary Ronan zoning that was handed out.

Tim asked for Robert and Karl to give brief resumes. Each gave a quick summary.

Motion made by Paul Grinde to adjourn, and Sue Laverty seconded. Motion carried, all in favor. Meeting adjourned at 5:33 pm.